IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8367 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S PANCHAL

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

MR BY MANKAD, AGP for Respondent No. 1

MR MC BAROT for Respondent No. 2

NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 18/08/2000

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed to issue

a writ of mandamus or any other appropriate writ, order or direction directing the respondents to consider the petitioner's seniority w.e.f. 15.12.1969 to the post of Addl. Asstt. Engineer and to hold that the petitioner was wrongly denied appearance in 1970 Test and to hold that the petitioner has been selected with effect from 1970 Test.

2. Heard learned counsel Mr. Gupta for learned Senior Counsel Mr.Y.N.Oza for the petitioner and learned AGP Mr. Mankad for the respondent no.1 State. Learned counsel Mr. M.C.Barot appeared for respondent no.2 and has adopted the arguments advanced by learned AGP Mr. Mankad.

3. According to the petitioner, he was working as Addl. Asstt. Engineer in District Panchayat, Banaskantha with effect from 15.12.1969. The petitioner was initially appointed on ad hoc and temporary basis and his appointment was subject to the approval from Panchayat Selection Board. It is submitted that there was an advertisement of recruitment and the petitioner was to appear in regular examination to be conducted by respondent no.4 Panchayat Selection Board. He had applied for appearing in the examination so that he can be selected and can be posted on the regular cadre. According to the petitioner, persons working in the government and Panchayat Services were eligible to apply to appear in the examination irrespective of the age. It is the case of the petitioner that the petitioner was not permitted to appear because of age bar. The petitioner heavily relies on the reply dated 17.7.71 given by the Secretary of Respondent no.4 Board. According to the petitioner, again in the year 1972, Panchayat Selection Board decided to make fresh recruitments on the post of Supervisor. The petitioner again applied claiming benefit of age relaxation on the ground that he is the employee of the panchayat. Since he was panchayat servant/employee, his request was accepted by the Board. It is submitted by the petitioner that he orally represented before the District Development Officer and Panchayat Selection Board that his case was unnecessarily and for no reasons, discarded in the year 1970. He had further submitted that had the petitioner been granted permission to appear in the examination in the year 1970, he would have been selected and, therefore, his services should be treated to be continuous without any break right from the date of his appointment i.e. 15.12.69.

4. Considering the facts and circumstances of the case and the submissions advanced by the learned

advocates for the parties, in my view, the case of the petitioner is based on hypothesis and surmises. It is nowhere averred by the petitioner nor any copy of such application is produced along with this application that he had clarified in the application itself in the year 1970 that he is a panchayat servant and age bar would not operate in his case. Further, it would be too much hypothetical and presumptive to hold that had the petitioner been permitted to appear in examination in the year 1970, he would have been succeeded and selected. Copy of the letter produced dated 17.7.1971 at Annex.C indicates that the petitioner was informed by the respondent no.4 in the year 1970, but no steps were taken against said decision till 1988. Improper rejection of an application by an independent Board viz. respondent no.4, would not by itself create a right as claimed by the petitioner. This submission being without any foundation or legal bearing requires to be rejected.

5. Learned Counsel Mr. Gupta for the petitioner has next submitted that petitioner should have been given seniority with effect from 15.12.1969. According to the petitioner, he is one of the senior most in the district and he comes within first 15 in the seniority. The petitioner has submitted that seniority list was prepared for the first time in the year 1984 and the petitioner was shown below the persons junior to him ignoring his date of appointment in the department. It is pertinent to note that the petitioner is silent as to the circulation of provisional seniority list, confirmation of such list and publication of final seniority list. The petitioner has approached Gujarat Civil Services Tribunal, Gandhinagar and pleaded his case for seniority which was not entertained by the Tribunal as the Tribunal was not having any jurisdiction to deal with such disputes. According to the petitioner, seniority list prepared in the year 1984 does not accept the case of the petitioner. On careful consideration of the order at Annex.A under which the petitioner came to be appointed as Addl. Asstt. Engineer, it is crystal clear that appointment of the petitioner was ad hoc and on temporary basis and subject to regularisation by the Panchayat Selection Board. Petitioner was appointed on work charge establishment. It would, therefore not be legal and proper to hold that the appointment of the petitioner was on substantive post or in regular cadre. The government resolution dated 17.10.1983 annexed at page 30 of the petition clearly reveals that the government has laid down certain policies as to the seniority of Junior Engineers/ Supervisors / Overseers in the Panchayat Department. As per the policies laid down by the

Government in the aforesaid Govt. Resolution, period of service spent by the Officers appointed on work charge establishment and on temporary and ad hoc basis, is not to be considered for the purpose of computing seniority. Hence, seniority list prepared in the year 1984 is strictly in accordance with the policies laid down in the aforesaid Govt. Resolution. Mr. Gupta, learned counsel appearing for the petitioner has relied on the decision rendered in the case of Lallubhai Atmaram Joshi and others v/s The Municipal Corporation, Ahmedabad and another, reported in 1984 G.L.H. (U.J.) 50. On careful consideration of the said judgment, in my view, the same is not applicable to the facts of the present case and, therefore, is of no help to the petitioner. As observed above, it cannot be said that the appointment of the petitioner is on substantive or regular cadre and cannot be said to be officiating appointment with effect from 15.12.1969. Under the circumstances, the decision relied on by the learned counsel Mr. Gupta for the petitioner in the case of L. Chandrakishore Singh v/s State of Manipur & Ors., reported in (1999)8 SCC 287, is also not applicable to the facts of the present case and is of no help to the petitioner.

6. On the other hand, learned AGP Mr. Mankad has rightly placed reliance on the decision of the Apex Court in the case of Chief of Naval Staff & Another v/s G. Gopalakrishna Pillai and others, reported in (1996)1 SCC P.251, wherein the Apex Court has held that "ad hoc appointment without selection by regularly constituted Selection Body cannot be counted towards seniority, even though uninterruptedly followed by regularisation in the same post." The Apex Court has further observed that "this Court has only reiterated the principle that if an employee had been appointed on ad hoc or temporary basis exceeding the quota fixed for such appointment such employee would be entitled to get the credit of continuous officiation in fixing seniority provided such ad hoc or temporary appointment had been made by a regularly constituted body for holding the selection of the candidates to be appointed. " Ld. AGP Mr. Mankad has also placed reliance on the decisions in the case of State of Gujarat v/s C.G. Raiyani, reported in (1995)2 SCC P.40 and in the case of Food Corporation of India v/s Thaneswar Kalita and others, reported in (1995)3 SCC 341. However, in view of the ratio laid down by the Supreme Court in the case of Chief of Naval Staff (supra), I do not see any need to refer or discuss the aforesaid two other decisions.

7. As observed earlier, it is undisputed that the

appointment of the petitioner is on work charge basis purely on ad hoc and temporary basis and he was not appointed on substantive post in regular cadre by duly constituted regular selection body in the year 1969 or 1970. He appeared for regular post in the year 1972 and was appointed on the substantive post in regular cadre after his selection by respondent no.4 Board. Under the circumstances, there is no merit in this petition and it requires to be dismissed.

8. In the result, petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated. No costs.

18.8.2000 [C.K. BUCH, J]
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